IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NOs : 1984 & 1416 of 2005

WRIT PETITION NO: 1984 of 2005:

Between:

T. Jasmine Raju, S/o. Lazer, Hindu,
R/o. Railway Quarter NO. 397 B, Bitrargunta, Nellore District.

..... PETITIONER

AND

1 Assistant Security Commissioner, Railway Protection Force,
S.C. Railway, Vijayawada.
2 Sri K. Neelakanta Rao, Inspector, Railway Protection Force,
Rayanpadu Work Shop, Enquiry Officer, S.C. Railway,
Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in appointing the 2nd Respondent who is his subordinate as Regular Departmental Enquiry Officer to conduct enquiry in Charge Sheet vide Proceedings No. B/XP.227/153/2005/01 dt. 06-1-2005 when the 1st Respondent himself conducted Fact Finding Enquiry and submitted report to the Senior Divisional Security Commissioner is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and consequently direct the 1st Respondent to appoint the Enquiry Officer who is

not in the below rank of Assistant Security Commissioner and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

WRIT PETITION NO : 1416 of 2005:

Between:

K. John Babu, S/o. Late Venkanna,
R/o. Railway Protection Force, Vijayawada Barracks, South Central Railway, Vijayawada, Krishna District.

..... PETITIONER

AND

1 The Asst. Security Commissioner, Railway Protection Force, South Central Rly., Vijayawada, Krishna District.
2 K. Neelakanta Rao, IPF,
Rayanpadu Workshop, South Central Railway,

Vijayawada, Krishna District.
3 Sr. Divl., Security Commissioner, Railway Protection Force,
South Central Railway, Vijayawada, Krishna district.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue writ or order or direction more particularly one in the nature of writ of mandamus declaring the action of the first respondent in appointing the 2nd respondent who is his subordinate, regular departmental enquiry officer to conduct enquiry in Charge Sheet vide proceedings No.B/XP. 227/153/2005/02, dt. 6.1.2005 when the first respondent himself conducted fact finding enquiry and submitted report to the 3rd respondent is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and consequently direct the first respondent to appoint the enquiry officer who is not in the below rank of Asst. Security Commissioner and pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.J.M.NAIDU (In both the writ petitions)

Counsel for the Respondents : MR.GOURI SHANKAR SANGHI FOR RMAPP-1&2 (in both the writ petitions).

The Court, at the admission stage, made the following :

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NOs : 1984 & 1416 of 2005

COMMON ORDER:

Since the common question of law is involved in these two writ petitions, they are being disposed of by a common order.

2. Both these writ petitions have been filed by the Head Constables of Railway Protection Force, challenging the action of the 1st respondent in appointing the 2nd respondent as an Enquiry Officer to conduct enquiry vide charge sheet proceedings dated 06-01-2005.

3. The brief facts that are necessary for disposal of the present writ petitions are stated as follows:

Writ Petition No.1984 of 2005:

With regard to certain allegations regarding involvement of the petitioner in a theft and as such on a complaint given by the Senior Section Engineer, Bitragunta, the Senior Divisional Security Commissioner, Railway Protection Force, Vijayawada, nominated the 1st respondent-Assistant Security Commissioner as a preliminary Enquiry Officer to conduct enquiry. Accordingly, the 1st respondent conducted the preliminary enquiry against one N.Vajraiah, Sub-Inspector, Railway Protection Force, Bitragunta, including the petitioner duly taking his statement and submitted a report to the Senior Divisional Security Commissioner, Railway Protection Force, Vijayawada. Based on the said report, a charge sheet under Section 9 (1) (i) of the Railway Protection Force Act, 1957 read with Rule 153 of Railway Protection Force Rules, 1987 (for brevity 'Rules, 1987') was issued against the petitioner vide proceedings No.B/XP.227/153/2005/01, dated 06-01-2005 to the effect that the petitioner has committed misconduct being as henchman of N.Vajraiah in criminal activities. Even the before submission of explanation to the charge

sheet, the 1st respondent nominated the second respondent as Enquiry Officer vide proceedings dated 06-01-2005. The petitioner further contends that when the preliminary enquiry is conducted by superior officer and submitted a Fact Finding Report to the higher authorities, the Subordinate Officer cannot be appointed as an enquiry officer as per the Railway Board Circular dated 10-04-1962.

4. The petitioner gave a representation dated
23-01-2005 requesting the 1st respondent to appoint Enquiry Officer in above the rank of Assistant Security Commissioner. But, the 1st respondent rejected the claim of the petitioner. Hence, challenging the proceedings dated 06-01-2005, this writ petition has been filed.

5. The 1st respondent filed a counter affidavit stating that the enquiry conducted by the 1st respondent is not connected to the charges issued to the petitioner and in the report itself, there is no mention about adverse activities of the petitioner and the report of the 1st respondent is mainly on the activities of N.Vajraiah, and nothing to do with the petitioner. The petitioner was issued charge sheet based on the report of one J.R.Sastry, Inspector, Nidadavolu, who has conducted preliminary enquiry in this case but not based on the report of 1st respondent and that document is only cited in the charge sheet. It is further stated that in this case one K.Nilakanta Rao, Inspector, Rayanapadu, who is an independent officer was appointed as an Enquiry Officer. The petitioner has failed to make out the case and hence, he prayed to dismiss the writ petition.

Writ Petition No.1416 of 2005:

6. With regard to certain allegations regarding involvement of the petitioner in a theft, the 3rd respondent-Senior Divisional Security Commissioner, Railway Protection Force, Vijayawada ordered preliminary enquiry by nominating the 1st respondent-Assistant Security Commissioner as a preliminary enquiry officer and the 1st respondent conducted preliminary enquiry and submitted a report

proving the allegations against one N.Vajraiah. Thereafter, the 1st respondent issued a charge sheet against the petitioner vide proceedings dated 06-01-2005, alleging that the petitioner has worked as henchman to N.Vajraiah. Even before the submission of explanation to the charge sheet, the second respondent was nominated as enquiry officer and as per the Railway Board's circular dated 10-04-1962, when the preliminary enquiry was conducted by the Superior officer, a subordinate officer cannot be appointed as an Enquiry Officer and for that purpose the petitioner gave a representation dated 21-01-2005 to the third respondent but the same was rejected. Hence, challenging the proceedings dated 06-01-2005, this writ petition has been filed.

7. The 1st respondent filed counter affidavit and took the same plea as contended in W.P.No.1984 of 2005. Therefore, it is not necessary to reproduce the same.

8. The learned counsel for the petitioners in both the writ petitions contended that when the preliminary enquiry was conducted by the higher authority, the lower authority to the higher authority cannot be appointed as an enquiry officer. Though the 1st respondent himself conducted the Fact Finding Enquiry and submitted the report to the 3rd respondent-Senior Divisional Security Commissioner, the 2nd respondent who is a lower authority to the 1st respondent cannot be appointed as an Enquiry Officer which is contrary to the Railway Board circulars and in order to avoid conflict of decisions in respect of the charges levelled against the three delinquent officers, one enquiry officer can conduct the enquiry, so that all the witnesses cited can be examined in the same enquiry, in view of the fact that the charges against all the three delinquents are more or less similar in nature. Hence, a direction may be given to the 3rd respondent-Senior Divisional Security Commissioner to allow the representations of the petitioners in both the writ petitions.

9. On the other hand, the learned standing counsel for the respondents in both the writ petitions contended that the reason for issuing of charge sheets is not on the basis of the 1st respondent's report. Indeed, K.Neelakanta Rao-2nd

respondent was appointed as an Enquiry Officer and basing on his report only charge sheets were issued to the petitioners. His next contention is that the present Enquiry Officer is in the cadre of officer who conducted preliminary enquiry and that the 1st respondent who conducted the preliminary enquiry did not mention any adverse activities against the petitioners and therefore, the charges in respect of all the three delinquents and the evidence to be let in are not one and the same and therefore, there are no grounds to interfere with the charge memos. Hence, he prays to dismiss both the writ petitions.

10. The charges levelled against the petitioner in W.P.No.1416 of 2005 are as follows:

> "1. He worked as a henchman to SIPF N.Vazraiah in his nefarious criminal activities and also a close associate of Sri T.Jasmine Raju, HC.024/BTTR, new at RYP, who is also a henchman to the SIPF and maintained good rapport with the criminals and receivers for his own benefits which has resulted in a major crime of CST-9 plates of 626 nos. and ultimately registered a case in crime No.15/2004, dt.21-10-04, under Section 3 (a) of the RP (UP) Act, of NLR post. Thus, his action in supporting crime and criminals amounts to serious misconduct, gross dereliction of his duty, unbecoming of a member of the force, thereby violating rule No.146.4, 146.2(i) of the RPF Rules, 1987 and Rule No.3(1) (iii) of the Rly. Services (Conduct) Rules.
>
> 2. Serious misconduct in that he was frequently associated with SIPF Sri N.Vazraiah, SIPF (u/s.) for Task force duties but actually being utilized for other nefarious activities. Though he was fully aware of the activities of criminals and receivers at BTTR and also his own Incharge Official ie., SIPF Sri N.Vazraiah, he concealed the facts and has not reported to his higher officers and thus allowed a major theft of 626 CST-9 plates at BTTR yard. His action for such serious misconduct leads to involvement of moral turpitude unbecoming of a member of the force and thus violated Rule No.146.4 ofRPF Rules, 1987 and Rule No.3(1)(iii) ofRPF Rules, 1987.
>
> 3. Serious misconduct in that he maintained nexus between receivers and SIPF Sri N.Vazraiah and thus, encouraged crime at BTTR, which is evident from the statements of ASIsPF, now SisPF, Sri E.Seetharam Babu & Sri R.S.Munuswamy and which has resulted in a major theft of 626 nos of CST-9 plates at BTTR outpost. His action in connivance with the receivers amounts to serious misconduct unbecoming of a member of the force.

Thereby, he violated the Rule No.146.4 of the RPF Rules, 1987 and Rule No.3(1)(iii) of the Railway Services (Conduct) Rules, 1966."

In that case, four documents were listed and three witnesses were cited for the marking and examination during the course of enquiry.

11. In W.P.No.1984 of 2005 the charges levelled against the petitioner are as follows:

"1. While working as office writer at BTTR, on 07-10-2004, when a staff of SSE/P.Way/O/BTTR, brought a theft report to the outpost, he refused to receive the letter nor informed the contents of the letter to any of his officers. Being an experienced office writer with a working experience of 4 years at BTTR, his failure to receive such an important document and take timely action in informing to his officers, exhibits his misconduct and sheer negligence towards his legitimate duties.

2. While working at BTTR, he has become a henchman to SIPF/BTTR, followed his movements duly making diary entries in the daily diary of BTTR outpost between 19-09-2004 and 06-10-2004. He has confessed of his closeness to SIPF/BTTR and the receivers which amounts to serious misconduct and malafide intention and has encouraged criminal activities at BTTR.

3. Though he had knowledge of the happenings/criminal interference at BTTR yard, which resulted in a major theft of CST-9 plates, he did not make any efforts to pass any information to the higher ups and thereby suppressed the same which speaks of his serious misconduct and exhibits his malafide intention. Thus, he has acted in a manner unbecoming of a member of the force.

4. Serious misconduct in which he was alleged to have maintained a close relationship with the receivers by name Ahmed Basha, Khader Basha and Mastan and conspired with them and had talks with them when the SIPF was not available at the outpost thus keeping nexus between receivers and his SIPF,thereby aiding the nefarious activities, which resulted in a major theft of CST-9 plates which took place in BTTR yeard close to the RPF OP and thus brought discredit to the reputation of the force beign a member of the force, which involves his moral turpitude.

Thereby, he violated Rule No.146.2 I) & 146.4 of RPF Rules, 1987 and Rule No.3 (i) (ii) & (iii) of the Rly. Services (Conduct) Rules, 1966.

Hence, the charge."

In this case, 8 documents were listed and six witnesses were cited for the purpose of marking and examination during the course of enquiry.

12. Whereas the charges levelled against N.Vajraiah, who is not a party in both these writ petitions, are as follows:

" ***Charge-I:***

Gross negligence of duty in that on 08-10-2004, he refused to acknowledge the theft complaint of Sr.SE/P.Way/BTTR regarding theft of 1000 nos. of CST-9 plates, which was subsequently confirmed as theft of 626 CST plates, from the custody of Sr.SSE/P.Way/BTTR, as reported by IPF/NLR,SSE/PW/BTTR and his staff.

In spite of having first hand information of the theft on 07-10-2004, he has neither conducted any *prima-facie* enquiry into the alleged theft nor informed his superior officers of the theft.

Thus, he has suppressed information and neglected and failed to carry out his duty as a member of the force with due promptitude and diligence, which amounts to serious misconduct.

Charge-II:

Serious misconduct and gross negligence in that he failed to prevent the theft of 626 nos. of CST-9 Plates valued Rs.2,25,360/- from the stocks available at KM No.208/23-35 and REM 1067-1075 on the East side of up line track at BTTR station. This case was registered by IPF/NLR in Cr.No.LC 18/Engg.12/NLR/04, dated 09-10-2004 at NLR post.

Charge-III:

For his slack supervision in that he failed to act briskly and take any action in one instance when one constable by name A.K.Gopi of BTTR O/P, who was on duty at A & C points in 22.00 to 06.00 hrs. shift in the month of July, 2004, found some suspected persons in his duty area and made efforsts to nab them with the help of a Box boy named Chitti, the criminals fled from the place. The constable recovered one hammer and Iron rods and brought the matter to the notice of SIPF/BTTR, who neither made any enquiries nor any attempt to trace the criminals.

Again on 05-10-04, when the same constable Sri A.K.Gopi of BTTR O/P, while on escort duty by NMG special from BTTR-SKM noticed 4 to 5 persons in the Loco Shed meddling with Railway property in a suspicious manner at about 22.20 hrs and immediately informed the matter to the on

duty sentry Sri K.John Babu, HC968/BTTR through cell phone to intimate the fact to SIPF/BTTR who was at his home. The SIPE, though made rounds of the area and noticed 12 no. of CST-9 plates lying on the ground thrown by the criminals did not make any efforts to trace out the absconded criminals or secure the thrown away Railway property. Also, he failed to make any documentation regarding the suspected theft.

These two incidents speak about the doubtful integrity and breach of trust of the SI in securing the Railway Property and arresting the criminals for the reasons best known to him. Thus, he has acted in a manner unbecoming a member of the force.

CHARGE-IV:

Gross neglect of duty and disobedience of the orders of superior officers in that instructions have been issued by Sr DSC/BZA, vide letter No.XP/DSC/BZA/Con/2004, dated
12-08-2004, regarding precautionary measures to be taken to preent the yard thefts especially iron material but the SIPF/BTTR has failed to take any remedial measures. Also, during the meeting held at NLR post on 03-10-2004, instructions issued by Sr.DSC/BZA in the Crime Meeting held on 30-09-2004 at Sr.DSC/O/BZA, were reiterated by SIPF/NLR to SIPF/BTTR, instructing him to keep a close watch on the activities of old criminals and keep strict vigil at BTTR by making frequent night rounds. But he has taken no such efforts and thereby willfully disobeyed the lawful order of his superior officers.

CHARGE-V:

Serious misconduct and gross dereliction of duty in that he brought two receivers by name Sk.Ahmed Basha and Mastan to office in the month of July 2004 and enquired with them regarding theft of Railway Property (Iron material) in Cr.No.9/2004 but has not shown any tangible results which has resulted in the occurrence of the major theft of 626 nos of CST-9 plates at KM No.208/23-35 and REM 1067-1075 on the East side of up line track at BTTR station. Thus, he has irresponsibly neglected his duties and not caused discreet enquiries into the theft of Railway property which amounts to serious misconduct.

Thus, he violated Rule Nos.41 (1) (a), (b), 41(2) (i) (ii), (vi) (vii), (viii), (xix), 146 (1), 146.2 (i), 146 (3) (i) and 147 (i), (ii), (iii) of RPF Rules, 1987 and Rule No.3 (1) (i), (ii) & (iii) of the Railway Services Conduct Rules, 1966."

In the said charge sheet, 16 documents were marked and 10 witnesses were cited.

13. As seen from the charges against N.Vajraiah is concerned, he committed

gross negligence of duty on
08-10-2004 and also he was having information of theft on
07-10-2004. It is also gross negligence of duty of disobedience of the orders of the superior officers which is a serious misconduct which resulted in the occurrence of major theft of 626 CST-9 plates on the East side of applying track of Bitragunta Railway Station Yard. Those charges were not connected with the charges levelled against the petitioners. Insofar as the charges levelled against the petitioners are concerned, though they are the henchmen of N.Vajraiah in his vicarious criminal activities, they maintained nexus between the receivers and N.Vajraiah and thus encouraged the crime. Therefore, the charges levelled against the petitioners are not directly on the issue of framing charges against N.Vajraiah. Further more, the documents marked to be brought on record to the departmental enquiry and the witnesses cited to be examined in the departmental proceedings are not one and the same. Though some witnesses are common in all the three departmental enquiries, but, at the same time it is not one and the same. Therefore, there is no possibility of conflicting of decisions in view of the fact that the evidence to be let in both the cases in writ petitions is entirely different and distinct though some documents and some evidence is common.

14. Based on the Railway Board Circular dated
10-04-1962, the learned counsel for the petitioners contended that the Board has considered the matter and decided that except in cases arising out of Fact Finding Enquiries like enquiries consequent to audit report, the reports from SPE departmental enquiries for disciplinary action, should not be entrusted to an officer in lower status than that of the officer who conducted the Fact Finding Enquiry.

15. So based on the above circular, it is contended that the 2nd respondent who is an Enquiry Officer is lower in status than that of the status of officer who conducted Fact Finding Enquiry.

16. In the counter affidavit, it is stated that though the 1st respondent

conducted a Fact Finding Enquiry mainly on the activities of the N.Vajrayya, in the enquiry conducted by the 1st respondent, there is no mention about the adverse remarks or allegations against the petitioners. It is further specifically stated in the counter affidavit that the petitioners were issued charge sheets based on the report of J.R.Sastry, who has conducted preliminary enquiry.

17. Therefore, appointment of 2nd respondent is not contrary to the rules governing the service conditions. Since the charges were framed against the petitioners based on the preliminary enquiry conducted by the officer in the rank of Inspector, the appointment of 2nd respondent cannot be said to be contrary to the Rules of 1948 or Railway Board Proceedings.

18. As per Rule 153.2.1 of the Rules, 1987, whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an enrolled member of the Force, it may itself inquire into, or appoint an Inquiry Officer higher in rank to the enrolled member charged but not below the rank of Inspector, or institute a Court of Inquiry to inquire into the truth thereof.

19. It is not disputed before this Court that the 1st respondent is the disciplinary authority. The petitioners are in the cadre of Head Constable. The appointment of 2nd respondent as an Enquiry Officer is higher in rank to the petitioners and not below the rank of Inspector. Therefore, the appointment of 2nd respondent is completely inconsonance with the Rules.

20. The learned counsel for the petitioners placed a strong reliance of Rule 163 the Rules, 1987, which reads:

> "Where two or more enrolled members of the Force including those on deputation to the Force are involved in any case, the disciplinary authority may make an order directing that the disciplinary action against two or all of them may be taken in a common proceeding."

21. No doubt, the above proceedings provide for that the disciplinary action may be taken against two or all of them in a common proceeding but that does not mean, when the charges are different and the witnesses to be examined are not common and also the documents to be marked are different in two departmental proceedings, common proceedings shall be initiated.

22. In view of the fact that each case has to be decided on its own merit, I am of the considered opinion that the Rule 163 of the Rules, 1987applies only when the evidence to be let in against the delinquents is one and the same and when two or more enrolled members involved in any case. Viewed from any angle, the appointment of 2nd respondent as an Enquiry Officer cannot be said to be illegal or arbitrary.

23. Therefore, the writ petitions are totally devoid of merit and accordingly they are dismissed. No costs.

_____

Kvr March 14, 2005

To

1 The Asst. Security Commissioner, Railway Protection Force,
South Central Rly., Vijayawada, Krishna District.
2 Sr. Divl., Security Commissioner, Railway Protection Force,
South Central Railway, Vijayawada, Krishna district.

3 Two C.D.copies.

4 K.Neelakanta, Reg. Enquiry Officer, Rayenpadu Workshop,

South Central Railway, Vijayawada.